Minnesota:

Watershed District Act adopted in 1955 authorized formation of districts (there are 45 Watershed Districts) and created the state Water Resources Board

Drainage systems in MN may be under the jurisdiction of one of several authorities:
- County Commission
- Joint county drainage authority
- Watershed district board of managers

Transfer of jurisdictional authority from the county to the watershed district happens quite often, for political and practical reasons.

Purposes of Watershed Districts

1. Control or alleviate damage from flood waters;
2. Improve stream channels for drainage, navigation, and any other public purpose;
3. Reclaim or fill wet and overflowed land;
4. Provide a water supply for irrigation;
5. Regulate the flow of streams;
6. Divert or change all or part of watercourses;
7. Provide or conserve water supply for domestic, industrial, recreational, ag, or other public use;
8. Provide for sanitation and public health, and regulate the use of streams, ditches, or watercourses to dispose of waste;
9. Repair, improve, relocate, modify, consolidate, and abandon all or part of drainage systems within a watershed district;
10. Control or alleviate soil erosion and siltation of watercourses or water basins;
11. Regulate improvements by riparian property owners of the beds, banks, and shores of lakes, streams, and wetlands for preservation and beneficial public use;
12. Provide for hydroelectric power generation;
13. Protect or enhance the water quality in watercourses in water basins; and
14. Protect groundwater and regulate its use to preserve it for beneficial purposes.

Wisconsin:

In 1997, the Wisconsin legislature transferred water resource management authority from a proliferation of special purpose districts back to Wisconsin's counties. The state establishes minimum performance standards for nonpoint pollution and erosion control that guide each county's development and implementation of a Land and Water Resource Management Plan. Plans are approved by the state Ag Department and implemented through partnerships with municipalities, landowners, local organizations and other interested parties.

Nebraska:

Faced with 500 special purpose districts involved in water and land management issues, "each with insufficient authority, jurisdiction and resources to operate effectively," the 1969 Nebraska legislature created 23 Natural Resources Districts.

Board members, elected by district voters, manage annual budgets ranging from $125,000 to $16,400,000 and exercise a range of fiscal authorities including taxation and bonding. Districts exercise authority not only over water and soil resources, but over a broad range of environmental areas including solid waste disposal; sanitary systems; drainage; pollution control; management of fish and wildlife habitat and recreation and park facilities; and forest and range management.

Iowa:

The Constitution of the State of Iowa, adopted in 1857, included:

Bill of Rights, Article I, Section 18, Eminent Domain: Drainage Ditches and Levees

"Private property shall not be taken for public use without just compensation first being made, or secured to made to the owner thereof, as soon as the damages shall be assessed by a jury, who shall not take into consideration any advantages that may result to said owner on account of the improvement for which it is taken."

1908 Amendment

"The general assembly, however, may pass laws permitting the owners of lands to construct drains, ditches, and levees for agricultural, sanitary, or mining purposes across the lands of others, and provide for the organization of drainage districts, vest the proper authorities with power to construct and maintain levees, drains, and ditches and to keep in repair all drains, ditches, and levees heretofore constructed under the laws of the state, by special assessments upon the property benefited thereby. The general assembly may provide by law for the condemnation of such real estate as shall be necessary for the construction and maintenance of such drains, ditches and levees, and prescribe the method of making such condemnation."

Soil Conservation Districts Law

"It is hereby declared to be the policy of the legislature to integrate the conservation of soil and water resources into the production of agricultural commodities to insure the long-term protection of the soil and water resources of the state of Iowa, and to encourage the development of farm management and agricultural practices that are consistent with the capability of the land to sustain agriculture, and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist and maintain the navigability of rivers and harbors, preserve wildlife, protect the tax base, protect public lands and promote the health, safety, and public welfare of the people of this state."

A committee, consisting of a chairperson and eight voting members appointed by the governor, along with several ex-officio members, is attached to the Department of Agriculture. The committee establishes a **state drainage coordinator** who works with soil and water conservation districts, and drainage and levee districts.

Individual Drainage Rights law

When an owner or owners of land desire to make drainage improvements by construction of levees, ditches, tiles, or underground drains for agricultural or mining purposes across the land of others, including railroads and highways, *a descriptive application may be filed with the county auditor.* The auditor must fix a hearing time with the board of supervisors and issue notices to all affected property owners. If the board finds the petitioned improvement to be beneficial, general specifications shall be drawn, including details of construction, repair procedures, connections, and any compensation due to affected property owners.

Damages and compensation for property must be paid before any construction begins. Railroad companies may elect to undertake construction on that property. If anyone obstructs an outlet, he/she is liable for double the cost of damages sustained by upstream owners. If such action occurs a second time, liability increases to triple the cost of sustained damages. A board of supervisors can decide disputes between adjoining landowners.

Owners may drain their land in the course of natural drainage using open or covered drains without liability to downstream owners, unless substantial changes in quantity or manner of discharge occurs. Replacement drains are covered in the same manner, if due care is exercised with the improvement. When natural drainage runs to a highway, a land owner may enter the right-of-way to make the necessary outlet connection, but must follow specifications established by the highway authorities and leave the

right-of-way in good condition. If a tile or ditch must extend across a highway right of way, payment for materials, installation, and repairs must be paid from highway funds.

A county recorder may be requested to make private drainage systems a matter of record, using prescribed methods and procedures. Such records are not considered an essential part of the title to lands.

When mutual drain records are incomplete or when an owner believes cost apportionment is not equitable, the board of supervisors may be petitioned for relief. A hearing on the petition must be held after which the board will decide equitable assessments and reestablish records.

If land owners do not pay apportioned costs or if a needed repair is not made in a timely manner, the board shall by resolution establish a drainage district. Owners of a mutual drain can petition a board of supervisors to combine with an existing drainage district. Following a required hearing, the board may by resolution dissolve the mutual drain and combine with the drainage district.

North Dakota:

State Water Commission adopted in 1955 authorized formation of districts and created the state Water Resources Board to oversee them

The primary responsibility of the North Dakota State Water Commission is to provide effective management of North Dakota's water resources. The state water commission consists of the governor, agriculture commissioner, and seven other members appointed by the governor who shall take into account reasonable geographic considerations in making such appointments.

2011 Legislation on Drain tiling

Four bills addressed subsurface drainage of water. In the end HB 1459 and SB 2280 were amended to the same language and both bills were adopted. While the state engineer will develop the application form, the local water district will approve the application, unless it has statewide significance or the drainage project will adversely impact downstream landowners within one mile. The applicant must provide a 30-day notice to downstream landowners within one mile.
House Passed: 79-14 Senate Passed: 45-2 Governor: Signed

Text of HB 1459 as adopted:
Installation of an artificial subsurface drainage system comprising 80 acres of land area or more requires a permit. The state engineer shall develop an application form for a permit for subsurface drainage of water. A person seeking to construct an artificial subsurface drainage system must submit an application to the water resource district within which is found a majority of the land area for consideration and approval. Water resource districts may attach any necessary conditions to an approved permit, but may not deny an application unless the water resource district determines the application is of statewide significance or the proposed drainage will flood or adversely affect downstream landowners within one mile of the proposed subsurface drainage. Water resource districts must forward copies of all approved permits to the state engineer. Water resource districts shall determine if the application proposes drainage of statewide significance. If so, the application must be referred to the state engineer for consideration and approval, and the state engineer shall make a determination within thirty days. The permit applicant shall provide a 30-day notice to downstream property owners within one mile of the proposed subsurface drainage. If an investigation by a water resource district or a downstream landowner within one mile shows that the proposed drainage will flood or adversely affect downstream landowners within one mile, the water resource district may require flowage easements before issuing a permit. If an artificial subsurface drainage system drains into an assessment drain, natural watercourse, or pond, slough, or lake, a flowage easement is not

required. Flowage easements must be filed for record in the office of the recorder of the county or counties in which the lands are situated. A person that installs an artificial subsurface drainage system without first securing a permit to do so, as provided in this section, is liable for all damage sustained by a person caused by the draining, and is guilty of an infraction.
Emergency clause

From a Minnesota study:
Research suggests the three hallmarks of effective watershed governance systems to be:
(a) integration of sound science into decision-making;
(b) integration of economic and environmental objectives (recognizing that environmental and economic productivity are not adverse to each other); and
(c) efficient service delivery to stakeholders.

Particularly interesting was the idea of the "sector-based" approach. This approach recognizes that obstacles to sound environmental management practices among members of the regulated community may rest on competitive industry pressures. In keeping with the "pollution prevention" concept of acting as far upstream as possible, the sector-based approach works with an entire industry on a supra-watershed basis to achieve a general change in practice that maintains the "level playing field" among the local enterprise and those against whom it competes. (A local example might be the Toxic Reduction Project of the Minnesota Center for Environmental Advocacy, which seeks voluntary agreement within the health care delivery industry to substitute non-chloride-containing IV bags, tubing and other medical products for polyvinyl chloride materials that produce dioxin when incinerated.)

From: Matt McCaulley
Sent: Wednesday, June 13, 2012 7:27 AM
To: 'Brenda Forman'; 'Mary Duvall'; 'Michael Held'; 'kathy@sdgfa.org'; 'Rick Vallery'; 'executive@sdcattlemen.org'; 'Lorin Pankratz'; 'cstuder@sdfu.org'; 'Johnny Kerstiens'; 'bob.sdacc@midconetwork.com'; 'sdacd.mail@sdconservation.org'
Cc: 'Teddi Mueller'
Subject: Drainage Working Group Meeting April 11th in Mitchell - follow-up

Team –

I can't make it to Pierre today for the meeting. Here is my report:

1. On April 12, 2012 I spoke with Steve Rothe at the US Army Corps of Engineers (referenced in this story: http://www.aberdeennews.com/news/bobmercer/aan-james-river-flood-issues-difficult-to-fix-20120317,0,86878.story) . At that time, he indicated the summary study documents were not yet done, and he said it would be June of this year until that was finalized because of some new data.

   He said his engineers were busy with levee reconstruction issues, so didn't have access to lot of their bandwidth...but he was going to try to gather some numbers on how much storage would be available if the James River was dredged as proposed vs. how much storage would be needed. As of this email, I have not yet seen that data.

2. I followed-up with Mr. Rothe yesterday via email. He indicated some documents were available, but they were not on any websites. The following documents are available from the Corps:

   Scoping Report, 2006, 2MB; Steady-state hydraulic analysis, 2007, 54MB Hydrologic Flow Frequency Analysis, 2008, 20MB Unsteady-flow hydraulic analysis, 2009, 1MB Slumping analysis, 2008, 10MB (Spink County slumps) 100yr Flood Boundary maps 2006, Brown County 12MB Presentation to the JRWDD Board, March 2012, 1MB (PowerPoint).

   However, the overarching Summary Report is only drafted, pending more analysis of storage opportunities in Brown County after the Corps has access LiDAR data this summer.

3. I believe the ag groups will be most interested in the "Summary Report", but I have also requested the March 2012 PowerPoint.

4. The Army Corps of Engineers is not aware of any solution where the benefits would exceed the costs. In fact, Mr. Rothe was unaware of any renewed effort relative to a "Dredge the Jim" plan.